

### **REMARKS**

Claims 1 – 18 are pending in this application.

Claims 9 and 16 were withdrawn from consideration.

Claim 1-8, 10-15, 17 and 18 were rejected.

Claims 1, 4, and 13 were amended.

### **I. ELECTION OF SPECIES**

The Applicant elected the species of Figs. 1-4 for the purposes of the initial examination. The claims corresponding to the elected species are Claims 1-8, 10-15 and 17-18. Claims 9 and 16 were withdrawn from consideration.

However, Claim 9 depends from Claim 1. Claim 1 is a generic claims that is believed to stand in condition for allowance. Similarly, Claim 16 depends from Claim 13. Claim 13 is a generic claim that is believed to stand in condition for allowance.

Since the non-elected claims depend from, and further define a generic base claims, the Applicant has a right to have the restricted claims examined on the merits.

The Applicant therefore requests that Claim 9 and Claim 16 be reinstated and included as a pending claim.

### **II. 35 USC 112 Rejections**

The Examiner has objected to the wording of Claim 4 under 35 USC 112. In view of the Examiner's comments, Claim 4 has been amended. All claims are now believed to stand in proper form.

### **III. 35 USC 102(e) Rejections**

**Claims 1-6, 10-14, 17 and 18 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,382,596 to D'Ath.**

The rejected claims include two independent claims, which are Claim 1 and Claim 13.

These claims have been amended and are believed to be clearly distinguishable over the cited prior art references, as is explained below.

#### Claim 1

Claim 1 sets forth a fencing system for confining climbing animals. The fencing system includes a plurality of vertical posts and a plurality of canopy support brackets that are supported by the vertical posts. Each canopy support bracket has a first end, a second end and an apex point disposed between the first end and the second end. Accordingly, a rigid ascending section exists between the first end and the apex point, and a descending section exists between the apex point and the second end.

A continuous section of flexible netting suspended between the vertical posts and the canopy support brackets. In this manner, there is no gap in the netting as it moves from the vertical posts up onto the canopy support brackets. The flexible netting attaches to the vertical posts, the ascending section of each canopy support bracket and the descending section of each canopy support bracket. Accordingly, the flexible netting is supported vertically by the vertical posts. The flexible netting is also supported in an ascending angle to an apex point above the vertical posts by each ascending section of the canopy support brackets. Likewise, the flexible netting is supported in a descending angle from the apex point to the second end of the canopy support brackets by each descending section of the canopy support brackets.

**The D'Ath patent** shows a barrier fence that is designed as a barrier to humans, not as a barrier to climbing animals, such as cats.

The D'Ath patent shows a standard chain link fence with a support brackets that hold

barbed wire above the top of the chain linked fence. The novelty of the D'Ath patent is that the bracket for the barbed wire is connected to the chain link fence by a spring. Accordingly, as a person pulls on the barbed wire, the brackets holding the barbed wire will bend inward toward the person climbing the fence.

The Examiner argues that the D'Ath patent shows the structure of the present invention only when the barbed wire brackets are bent over by a person climbing the fence. In other words, the D'Ath patent only is relevant to the present invention when it is considered a system that includes a human participant performing a selective action.

It has long been established that a human cannot be considered part of any invention. The human body cannot be claimed or considered part of the workings of any invention. Accordingly, it is believed that Examiner's example is wrongful.

Regardless to the improper application of the D'Ath patent to the present invention, the D'Ath still does not disclose or suggest the structure being claimed. In Claim 1, the applicant specifically claims a rigid ascending section that extends from a vertical post to an apex point. The D'Ath patent discloses no such structure.

Furthermore, Claim 1 of the present invention also clearly claims a continuous section of flexible netting that attached to the vertical posts, the ascending sections of the canopy support brackets and the descending sections of the canopy support brackets. Such an attachment configuration is required to ensure that there are no gaps in the netting as the netting progresses from the vertical poles onto the canopy support brackets. In this manner, there is no opening in the netting through which a climbing animal can pass. This structure is simply not shown in the D'Ath patent.

In the D'Ath patent, it is clear that a flexible spring attaches the barbed wire brackets to the vertical posts. The vertical posts hold standard chain linked fencing. The barbed wire brackets hold strands of barbed wire. There are large gaps between the chain linked fence and the strands of barbed wire. The D'Ath patent therefore is useless as a barrier to a climbing cat. The D'Ath patent does not disclose or suggest any continuous section of netting that attaches both to the vertical posts and the barbed wire brackets. The D'Ath patent therefore fails to disclose the matter contained in Claim 1. Accordingly, the D'Ath patent does not anticipate the matter of Claim 1 and its dependent claims.

It is therefore believed that the matter of Claim 1 is distinguishable over the D'Ath patent. The Examiner is therefore respectfully requested to withdraw the 35 USC 102 rejection as applied to Claim 1 and its dependent claims.

#### Claim 13

Claim 13 sets forth a method of constructing a fence. The method includes erecting a plurality of supports along a periphery to be fenced. Each of the supports has a vertical section, an ascending section that extends to an apex point, and a descending section that extends from said apex point to a free end

A continuous section of flexible netting is attached to the vertical section, ascending section and descending section of each of the supports. The flexible netting is supported vertically by each vertical section. Similarly, the flexible netting is supported in an ascending angle to the apex point by each ascending section, and the flexible netting is supported in a descending angle from the apex point to the free end by each descending section of the supports.

As has been previously mentioned, the D'Ath patent does not disclose or suggest any continuous section of netting that attaches both to the vertical posts and the barbed wire brackets. The D'Ath patent therefore fails to disclose the methodology contained in Claim 13. Accordingly, the D'Ath patent does not anticipate the matter of Claim 13 and its dependent claims.

It is therefore believed that the matter of Claim 13 is distinguishable over the D'Ath patent. The Examiner is therefore respectfully requested to withdraw the 35 USC 102 rejection as applied to Claim 13 and its dependent claims.

#### **IV. 35 USC 103(a) Rejections**

**Claim 4 was rejected under 35 USC 103(a) as being unpatentable in view of D'Ath.**

The rejected claim depends from Claim 1, which is an independent claim. The matter of Claim 1 is believed to be fully distinguishable over the matter of the D'Ath patent for the reasons previously presented. The D'Ath patent simply does not disclose or suggest the canopy support bracket or the netting configurations claimed in Claim 1.

The matter of Claim 4 is therefore believed to be patentable since it depends from, and further defines, an allowable base claim.

**Claims 7, 8 and 15 were rejected under 35 USC 103(a) as being unpatentable over D'Ath in view of U.S. Patent No. 249,803 to Sparks.**

Claims 7 and 8 depend from Claim 1. Claim 15 depends from Claim 13. The matter of Claim 1 and Claim 13 have been distinguished over the D'Ath patent for the reasons previously presented.

The Sparks patent is cited to show a fence with ground anchors that are set into the ground. The Sparks patent makes no disclosure of any fence with canopy support brackets or netting that extends to the canopy support brackets. Consequently, the Sparks patent does not address the deficiencies of the D'Ath patent as applied to the independent claims.

The combined D'Ath and Sparks patents therefore fail to disclose the matter contained in independent Claim 1, independent Claim 13 or their dependent claims.

#### **V. DRAWINGS**

The application was filed with informal drawings. Formal drawings will be filed upon receipt of the Notice of Allowance for this application.

#### **VI. SUMMARY**

Having fully distinguished the pending claims over the cited art, this application is believed to stand in condition for allowance. However, if the Examiner is of the opinion that such action cannot be taken, the Examiner is requested to call the applicant's attorney at (215) 321-6772 in order that any outstanding issues may be resolved without the necessity of issuing a further Office Action.

Respectfully Submitted,



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